



## STATE OF NEW MEXICO WATER QUALITY CONTROL COMMISSION

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### Constituent Agencies

Environment Department  
State Engineer & Interstate Stream Commission  
Game and Fish Department  
Oil Conservation Division  
Department of Agriculture  
State Park Division  
Soil and Water Conservation Commission  
Bureau of Geology and Mineral Resources  
Municipal/County Representative  
Members-at-Large

### Minutes of the New Mexico Water Quality Control Commission Meeting December 11, 2001

The New Mexico Water Quality Control Commission (WQCC) meeting was held on December 11, 2001, in the NEA Building, Wood Hall, 130 South Capitol, Santa Fe, New Mexico.

#### MEMBERS PRESENT

Pete Maggiore	Chairman, New Mexico Environment Department
John Whipple	State Engineer & Interstate Stream Commission
Julie Maitland	Department of Agriculture
David Johnson	State Parks Division
Howard Hutchinson	Soil and Water Conservation Commission
Bill Olson	Oil Conservation Division
Steve Glass	City of Albuquerque - Municipal/County Representative
Dr. Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large
Jack Westman	Member-at-Large

#### MEMBERS ABSENT:

Lynn Brandvold	Bureau of Geology and Mineral Resources
Larry Bell	Department of Game and Fish

#### OTHERS PRESENT:

Tracy Hughes	WQCC Interim Counsel
Maria Voyles	WQCC Administrator
Dr. Jim Davis	SWQB
Steven Pierce	SWQB
John Montgomery	SWQB
David Hogge	SWQB
Jolene L. McCaleb	SJWC

OTHERS PRESENT cont.  
Kristen Don Tetra Tech  
Julie Tsatsaros SWQB  
C. Ritcliff GGI  
Heidi Pircher Attorney General's Office  
Kelly Bitner Neptune & Co.  
Mike Saladen LANL  
Rick Alexander LANL  
Eric Ames NMED Counsel  
Joel Lusk Fish and Wildlife

### **Item #1: Roll Call**

Maria Voyles, WQCC Administrator, took roll.

Chairman Maggiore introduced Ms. Tracy Hughes, from the Office of the Attorney General, as the interim counsel for the Commission.

### **Item #2: Approval of the Agenda**

Chairman Maggiore called for a motion to move Item #4 - Formal adoption of the Open Meetings Resolution for 2002 for consideration before Item #7 - Other Business and to enter executive session prior to adjourning to discuss litigation matters. Commissioner Westman so moved. Commissioner Johnson seconded the motion. The motion passed unanimously.

### **Item #3 Approval of the minutes of the November 13, 2001, meeting.**

After discussion and amendments, Commissioner Westman moved to approve the minutes as corrected. Commissioner Johnson seconded the motion. The motion passed unanimously.

### **Item #4 (formerly #5) Action on NMED petition to amend sections 20.6.4.10, 20.6.4.11, 20.6.4.12, 20.6.4.113 and 20.6.4.900 NMAC of the Commission's Standards for Interstate and Intrastate Surface Waters and scheduling of a public hearing.**

Dr. Jim Davis and Mr. Steven Pierce appeared on behalf of the Surface Water Quality Bureau of the New Mexico Environment Department. Copies of the amended petition were distributed. Mr. Pierce gave a statement that was read into the record.

Chairman Maggiore wanted to know the reason for the extended period between the submittal due date for Notices of Intent and the hearing date. The usual period is 10 days and the SWQB is requesting 18 days for this matter.

Mr. Pierce responded that the 18 days would give all parties more time to review the documents.

Commissioner Keyes asked if there were any changes to existing criteria other than the units associated with the numbers in the table.

Mr. Pierce responded that existing standards were moved into the table without intentional change, except for the units to make them consistent.

Commissioner Keyes asked if there was a definition of "harmonic mean flow" in the present standards. Mr. Pierce responded that there is not and, as the Commission determined during the Triennial review, normal statistical analysis methods need not be defined.

Commissioner Hutchinson asked whether the referenced EPA publications are listed in the table or would an individual have to go to the specific publication.

Mr. Pierce responded that currently the standards provide that if a substance is found that does not have a chronic standard, EPA's recommended water quality criteria can be used. Mr. Pierce also stated that the EPA uses a large database to obtain the information.

Commissioner Westman asked what the consequences would be if NMED did not comply with EPA standard.

Mr. Pierce stated that the EPA could take up promulgation.

Commissioner Westman asked why in proposed Section 10.6.4.1 1 C a single grab sample is used.

Chairman Maggiore requested that this type of technical question be held until the hearing, if one is set.

Chairman Maggiore requested a motion to set a hearing on March 12, 2002, immediately following the regular WQCC meeting for the matter of SWQB's petition to amend 20.6.4 NMAC - Standards for Interstate and Intrastate Surface Waters. Commissioner Johnson so moved and Commissioner Hutchinson seconded the motion. Chairman Maggiore requested an amendment to appoint a hearing officer and volunteered to serve as hearing officer. Commissioner Johnson accepted the amendment and Commissioner Hutchinson, in seconding the motion, also accepted the amendment. The motion, as amended, passed unanimously.

**Item #5 (formerly item #6) Formal approval and adoption into the State's Water Quality Management Plan of the TMDLs for: Centerfire Creek (plant nutrients), San Francisco River (plant nutrients), Canyon Creek (plant nutrients), Canyon Creek (turbidity), Mangas Creek (plant nutrients), Sapillo Creek (total organic carbon), Sapillo Creek (turbidity) and Whitewater Creek (aluminum).**

Dr. Davis and Mr. Hogge appeared on behalf of the Department.

Mr. Hogge asked the Commission if the method by which they received the information was satisfactory (CDs, e-mail, web site, or hard copy.)

The Commission stated that they were satisfied. Commissioner Westman thanked the SWQB for the way the information was presented and for the fact that paper and resources were saved.

Mr. Hogge provided copies of the proposed TMDLs and gave a presentation that included the reasons for the requested changes and outlined the public notice that was provided.

Ms. Julie Tsataros, NMED/SWQB and Ms. Kristen Dors, formerly NMED/SWQB, answered questions from the Commission on specific TMDLs.

The Commission requested that some technical corrections and some additional data be incorporated into the documents

Commissioner Keyes requested that data associated with each TMDL have the specific figure referenced in Appendix E, for example Figure \_\_\_\_ of Appendix E. Commissioner Keyes also requested that the definition of "flow" be included in each executive summary and that appendices have titles indicative of what it is actually in the table.

Commissioner Whipple would like the definition of "margin of safety" listed on all of the TMDLs.

Mr. Hogge stated that all corrections would be incorporated into the final document.

Commissioner Olson moved for adoption of the TMDLs into the State's Water Quality Management Plan. Commissioner Johnson seconded the motion. Commissioner Whipple offered a friendly amendment of approval contingent on the incorporation of the technical corrections. Commissioner Olson accepted the amendment. The motion passed unanimously.

#### **Item #6 (formerly item #4) Formal adoption of the Open Meetings Act Resolution for 2002.**

Mr. Pat Simpson, Attorney General Office, prepared a draft resolution on Open Meetings for the WQCC in 2002. Copies were provided to the Commission. The Commission had several concerns with the draft Open Meeting Act Resolution. Alternatively, Commissioner Johnson moved to adopt the language from the latest version of the resolution with a new date. Commissioner Whipple seconded the motion.

Commissioner Keyes stated that he had a copy of the resolution that was signed for 2001. Copies were made and provided to the Commissioners. Commissioner Johnson withdrew his motion with concurrence from Commissioner Whipple and the matter was deferred until the January 2002 meeting.

#### **Item #7 Other Business.**

Commissioner Hutchinson stated that he had received a request from the Grant County Soil and Water Conservation District for assistance or direction on amending the standards that are specific to Mangas Creek. Dr. Davis advised that the SWQB is the section to contact. Dr. Davis asked for the name of the individual that the SWQB should contact. Commissioner Hutchinson indicated that he will provide them with the requested information.

Dr. Davis stated that the SWQB has three items to bring before the Commission within the next few months.

- 1) Update on the bacterial source tracking study in the Middle Rio Grande. The selection committee met last week and selected a contractor. The final negotiation should take place by the end of this week and the work should begin in March. The study is scheduled to last one year but it is anticipated that it will be longer. The SWQB will give periodic updates to the Commission.
- 2) The status of the 305(b) report. The report is required by the federal Clean Water Act every two years, in April of the even-numbered years. Although EPA is allowing states until October 2002 to submit these reports, the SWQB will stay with the April 2002 deadline. The report will be a transitionary report as the SWQB is moving toward an electronic database that will allow them to compile data. The SWQB plans to bring the 305(b) report before the Commission during the March 2002 meeting for final action. Copies will be provided before that date for review and consideration.
- 3) The statewide Water Quality Management Plan (WQMP). The SWQB has been working on a complete update of the WQMP. The WQMP is close to being completed and may be brought before the Commission at the January 2002 meeting, pending action review by EPA of the draft. There is an extensive public participation process. Public information meetings will be held statewide. The meetings are tentatively scheduled for the first or second week in February in Las Cruces, Roswell, Santa Fe and Farmington. The SWQB hopes to provide the Commission with a final version at the March 2002 meeting.

Chairman Maggiore requested a motion to appoint the WQCC counsel as the Hearing Officer for the hearing in January 2002 regarding NMED's petition to amend 20.6.2.7, 3106, 3108, 3109, 5003, and 5101 NMAC (WQCC 01-17 R). Commissioner Olson so moved. Commissioner Hutchinson seconded the motion. The motion passed unanimously.

#### **Item #11 Next Meeting.**

The next meeting will be January 8, 2002, with the hearing to immediately follow the meeting. A suggestion was made to look into the use of the NM State Highway Department training rooms as a possible permanent meeting location and to arrange for coffee to be available at the meetings.

Chairman Maggiore requested a motion to enter executive session in order to discuss litigation strategy in the lawsuit between Forest Guardians and Defenders of Wildlife vs. EPA. Commissioner Maitland so moved. Commissioner Glass seconded the motion.

A roll call vote was conducted.

Pete Maggiore	Yes
John Whipple	Yes

Julie Maitland	yes
David Johnson	yes
Howard Hutchinson	yes
Lynn Brandvold	absent
Bill Olson	yes
Steve Glass	yes
Larry Bell	absent
Dr. Conrad Keyes	yes
Irene Lee	yes
Jack Westman	yes

The Commission entered executive session.

Commissioner Lee moved that the Commission return from executive session. Commissioner Hutchinson seconded the motion.

A roll call vote was conducted.

Pete Maggiore	yes
John Whipple	yes
Julie Maitland	yes
David Johnson	yes
Howard Hutchinson	yes
Lynn Brandvold	absent
Bill Olson	yes
Steve Glass	yes
Larry Bell	absent
Dr. Conrad Keyes	yes
Irene Lee	yes
Jack Westman	yes

The Commission returned to open session.

Chairman Maggiore stated for the record that the only matters discussed in executive session were those associated with litigation strategy with regard to the intervention by the Commission in the matter of Forest Guardians and Defenders of Wildlife vs. EPA and that the Commission have provided Paul Ritzma with guidance as to how the Commission wishes to be represented with respect to the intervention.

Commissioner Keyes moved to adjourn the meeting. Commissioner Olson seconded the motion. The motion passed unanimously

Chairperson 